

MILPITAS OVERSIGHT BOARD

TO THE CITY OF MILPITAS ACTING AS THE RDA SUCCESSOR AGENCY

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479
GENERAL INFORMATION: 408-586-3000 www.ci.milpitas.ca.gov

MILPITAS OVERSIGHT BOARD MEETING

Milpitas City Hall Committee Room
455 E. Calaveras Blvd., Milpitas, CA 95035

MEMBERS:

Jane Corpus
Bruce Knopf, Vice Chair
Mike McInerney, Chair
Michael Mendizabal
Althea Polanski
Matthew Tinsley
Glen Williams

ALTERNATES:

Alan Minato

Suzanne Carrig
Michael Fogelstrom

Minutes of the March 13, 2017 Meeting

I. CALL TO ORDER, ROLL CALL AND PLEDGE OF ALLEGIANCE

Chair McInerney called the meeting to order at 2:32 p.m.

ROLL CALL

MEMBERS PRESENT: Jane Corpus, Michael Fogelstrom, Mike McInerney, Mike Mendizabal, Althea Polanski, Matthew Tinsley and Glen Williams

MEMBERS ABSENT: None

II. PUBLIC FORUM:

Mr. Pete McHugh, resident of Milpitas, spoke in support of having a City park located at 230 North Main Street.

III. APPROVAL OF AGENDA

Moved by Mr. Williams and seconded by Mr. Mendizabal to approve the agenda. The motion passed unanimously.

IV. APPROVAL OF MINUTES: January 23, 2017 Meeting

Moved by Ms. Polanski and seconded by Mr. Mendizabal to approve the minutes of January 23, 2017 as submitted. The motion passed by the following vote: **AYES:** Corpus, McInerney, Mendizabal, Polanski and Tinsley **NOES:** 0 **ABSENT:** 0 **ABSTAIN:** Fogelstrom and Williams.

V. OLD BUSINESS: None

VI. NEW BUSINESS

Consider Resolution Regarding Amendment to the Purchase and Sale Agreement for Property Located at 540 South Abel Street, Milpitas, California, (APN 086-10-025) and Listed on the Long Range Property management Plan as Property No. 5.

1. Alternative A: Resolution No. 85 of the Oversight Board of the Successor Agency of the Former Milpitas Redevelopment Agency Approving Amendment to Purchase Sale Agreement Extending the Due Diligence Period and Closing Date and Reducing Purchase Price for Property Located at 540 S. Abel Street, Milpitas, California, (APN 086-10-025) Between Successor Agency and Rajyoga Meditation & Research Center, a Nonprofit Corporation and Authorizing Issuance of a New RFP Regarding said Property if Closing is Not Affected.
2. Alternative B: Resolution No. 85 of the Oversight Board of the Successor Agency of the Former Milpitas Redevelopment Agency Authorizing the Issuance of a New Request for Proposals for Property Located at 540 S. Abel, Milpitas, California, (APN 086-10-025).

Ms. Montoy, Attorney for the Oversight Board, presented the staff report via teleconference, in which she briefly described the two (2) different resolutions. One resolution approves a request from Rajyoga Medication & Research Center (RMRC) to reduce the purchase price on the property and further extend the due diligence period. She noted that the Board previously authorized an extension of the due diligence period based on the time necessary to pursue the entitlement process and that process has been completed. The Board now has a request that centers on new information about the condition of the property that has not been discussed before. If the Board supports this resolution, the Board must answer the following four questions:

1. Extend the due diligence period to what date.
2. Extend the closing of the sale to what date.
3. Reduce the purchase price by what amount.
4. Require the Buyer to execute the amendment to the Purchase and Sale Agreement on or before what date.

The other resolution denies the request and authorizes the issuance of a new request for proposal.

Chair McNerney added to the staff report by including a new item in the chronology that is in the agenda packet. The new item, which will be item number nine, is that on March 9, 2017 the RMRC signed a clean 2nd amendment to the Purchase and Sale agreement which sets the end of the due diligence period as February 1, 2017 and the close of the sale as March 1, 2017.

Mr. Atma Dayal, a representative for the RMRC, explained why the RMRC is asking for relief on the price. He explained that RMRC did not start to evaluate the condition of the property until the Planning Commission on January 13, 2017 had granted RMRC its entitlement to have a residential component on the site. The RMRC then received reports that that the roof had failed, that the HVAC system was rusted, and that most of the time the HVAC system did not work. He pointed out that the agenda packet has photographs showing the problem areas with the building's condition. The RMRC also learned for the first time from City staff that the RMRC project would require a fire alarm and sprinkler system as well as some seismic retrofitting.

He stated that the RMRC had obtained two bids to address the building's condition and the safety requirements and that the RMRC is requesting a \$503,000 price reduction to cover the cost estimate from the lower of the two bids which is also included in the agenda packet. He further noted that RMRC as a non-profit has limited resources since it raises funds through donations from its members and that an additional \$503,000 costs places the RMRC in a bind.

Mr. Dayal also pointed out that even with the \$500,000 relief that the RMRC is requesting, the net amount of \$3.5 million would still be the highest bid by approximately \$500,000. When the Board considered proposals in 2015, the County bid \$3 million for the property and the other two bids were substantially lower. He also indicated that if the Board approved the request, the RMRC should be able to close by the end of March 2017.

Board Member Williams asked if the RMRC is willing to stipulate that it has completed its due diligence and that it accepts that its due diligence has been met. Mr. Dayal replied that the RMRC has completed its due diligence and accepts that the due diligence has been met.

Board Member Polanski stated she is leaning towards moving forward with the sale and reducing the price so the Successor Agency may receive the maximum amount for the parcel. In weighing all the issues and in light of all the time and effort the Buyers, the Successor Agency and the Board have put into this process she believes it makes sense for the Board make every effort to finalize the sale.

Board Member Mendizabal stated he agreed with Board Member Polanski. The Board should just move forward with this Buyer at this time because if the Board issues another Request for Proposal there is time and effort to do that as well. The Board has come this far with this Buyer so the Board should make the effort to finish this up and take care of this sale.

Board Member Williams stated that he sympathizes with the issues that Mr. Dayal raises and that his support of any price reduction must have an agreement that all conditions have been waived at this point and that the deposit becomes non-refundable. He believes, however, that the Seller should not be responsible for the entire requested amount and that he is willing to compromise. He expressed support for reduction somewhere in the area of \$250,000.

Board Member Tinsley expressed his desire that if the parties today agree upon a reduced price, that the Board has firm assurances that RMRC will be unable to return at some future date and ask for a further price reduction. He asked Ms. Montoy if there is a way the Board could guarantee that the price the parties determine today is the final price and that Buyer would actually pay that price. Ms. Montoy responded that if a majority of the Board supports such direction, then she would draft language in the amendment to the Purchase and Sale Agreement (PSA) that would clearly state that the amendment is the last and final amendment to the purchase price as well as to the length of the due diligence period.

The Board recessed for six (6) minutes to give the RMRC representatives an opportunity to confer and develop a response to the ideas expressed so far.

Ms. Ratu Patel, a representative for the RMRC, reiterated the request for a reduction of \$500,000 off of the price that allows RMRC to take possession of the building and move forward. She stated that RMRC's budgetary constraints are such that absorbing this extra \$500,000 would cause an undue burden. She did affirm that with the opportunity for RMRC to complete its due diligence that the \$3.5 million adjusted price will be a firm number. Mr. Atma Dayal further stated that RMRC is not asking for relief from other improvements it plans to make inside the building and that even \$250,000 out of RMRC's budget will place a big burden on the organization.

Chair McNerney proposed consideration of a different principle for the splitting the costs reflected in the requested price reduction. The concept involves the Seller paying for all the costs associated with condition of the structure to include their share of the contractor overhead and dumping fees that amount to roughly \$200,000. The Buyer and Seller would evenly split the remaining costs related to the fire safety and seismic retrofit that Chair McNerney estimated at \$155,000 each for the Buyer and Seller. The Seller would assume the \$155,000 amount in recognition of the value of completing the due diligence period, making the deposit non-refundable, and closing the sale quickly with no further changes to the sale price.

Further discussion ensued between Board Member Williams and Mr. Dayal exploring reactions to different levels of price reductions between \$300,000 and \$355,000. At some point, Mr. Dayal stated that he believed the RMRC might be able to raise an additional \$100,000 to cover a portion of the estimated \$500,000 cost. Mr. Williams then asked if the Board and Successor Agency agreed to a \$400,000 reduction with no further ability to change the sale price, would the RMRC agree that its due diligence period is complete, the deposit becomes non-refundable as of the amendment's execution, and that the sale will close within thirty (30) days? Mr. Dayal said RMRC accepts those terms.

City Manager Williams stated that the Successor Agency also supports these terms and requested that the record reflect that when potential respondents to the RFP were contemplating a bid, the Successor Agency allowed everyone access to the building before a bid was submitted. City staff also knew that a residential component was part of RMRC's bid and City staff assumed that RMRC's architect would know that under the Building Code any change to a residential use requires fire alarms, sprinkler systems and fire-rated walls. The requirements for these fire and earthquake safety features are nothing that the City changed. City staff knows to point them out and City staff is at a loss to understand how the RMRC group became surprised about these requirements in February 2017.

Board Member Mendizabal asked if in approving a price reduction the Board is setting a precedent for the next property if the buyer offers a price, the Board accepts, and then later the Buyer seeks to reduce that price. Ms. Montoy responded that one has to consider all the facts and circumstances in evaluating whether a precedent applies. For the Oversight Board, the next property has no structure on it and for the Abel Street parcel there were no multiple bids close to the RMRC bid that might be concerned about the contemplated price reduction. Furthermore, the Board is considering an amendment that will still generate substantial financial benefit to the taxing entities.

After some discussion between the City Manager, Ms. Montoy, Ms. Patel, and Chair McInerney, there was consensus that Ms. Montoy would deliver the draft amendment to the PSA by March 15, 2017 to the City. The City Attorney would have until March 22, 2017 to review and edit the amendment before submitting it to Ms. Patel. Ms. Patel would have until March 27, 2017 to execute and return the amendment to the City. To allow time to execute the amendment and for the title company to prepare for the sale to close, Chair McInerney recommended the Board use the initial close date of April 30, 2017 that the RMRC proposed in its written request for a price reduction.

Moved by Board Member Williams and seconded by Board Member Polanski to adopt Resolution 85 as amended to approve a price reduction of \$400,000 in the sale of the 540 South Abel Street property to the RMRC conditional upon RMRC waiving all further due diligence and acknowledging that the \$50,000 deposit is now non-refundable along with that the Board and Successor Agency will no longer accept any further amendments or changes to the PSA. The Oversight Board's Attorney will deliver a draft amendment to the Purchase and Sale Agreement to the City no later than March 15, 2017 and the City will submit to the Buyer an amendment for execution no later than March 22, 2017. The Buyer will have until March 27, 2017 to execute and return the amendment to the City. The Board Chair and the Successor Agency have the authority to make non-substantive or less than significant changes to the agreement. The motion passed unanimously.

VII. NEXT MEETING

A. Identify Potential Agenda Items.

1. Consider the item postponed at the Board's February 16, 2016 meeting regarding the disposition of 230 N. Main Street property.

B. Set Date and Time.

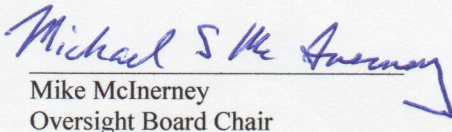
It was agreed that the next meeting will be held June 14, 2017 at 1:30 p.m.

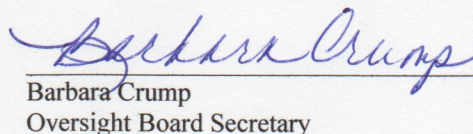
VIII. MEETING ADJOURNMENT

Moved by Ms. Polanski and seconded by Mr. Mendizabal, Chair McInerney adjourned the meeting at 3:53 on the consensus of the Board.

Meeting minutes drafted and submitted by
Barbara Crump, Board Secretary

Approved on June 14, 2017


Mike McInerney
Oversight Board Chair


Barbara Crump
Oversight Board Secretary